and think that the proper course for me is to have regard to the substance of the respondent's claim and the relief to which she will probably be entitled if successful.

It seems to me that the respondent's case is that the parties to the anti-nuptial contract agreed that house property in Kuala Lumpur to the value of $300,000 should be settled on the respondent. If the respondent succeeds in establishing this contract and its breach, primarily, the order would be for specific performance of the contract, and for aught I know to the contrary, the parties may be possessed of real property in Kuala Lumpur of sufficient value to enable them to comply with the decree for specific performance without it being necessary to acquire any land in order to complete the settlement.

The respondent makes a claim for damages. This I assume to be a claim for damages for breach of one or more of the terms of the anti-nuptial contract. This claim is incidental or ancillary to the other prayers, and I confess I have very considerable difficulty in appreciating how the respondent can recover damages as ancillary to any of the preceding four prayers to the plaint. Mr. Shearn for the appellants did not press this matter for the reason, I assume, that he experienced the same difficulty as I did. I am of opinion, therefore, that the respondent's claim may be described as an action for restitution of conjugal rights with ancillary relief, for an order for specific performance of a contract, and for a declaration that the marriage between her husband and another woman is null and void. I hold that the suit is not a 'suit for money' within the meaning of Section 369 (iii) of the Civil Procedure Code, and that on this ground the appeal fails.

If I am wrong in this view, and the section has application to the case for the respondent, I think the Registrar was right in the exercise of his discretion in refusing to make any order. In the first place, this is an action by a wife against her husband. The respondent appears to be a native of Canton, who married the first appellant in Hong Kong, and is now living in Kuala Lumpur, at a considerable distance from her parents and the other members of her family. Primarily, therefore, it is a case in which the Court should be reluctant to order security for costs, since such an order might amount to a denial of justice to the respondent.

It is said that this Section was introduced in India, because there, a female cannot be imprisoned for debt. If that be the reason for its introduction in India, there would appear to be no similar reason for the existence of such a section in our Civil Procedure Code; but the legislature has seen fit to enact this, and it is the duty of the Courts loyally to give effect to its provisions.

This action arises, as I have said, out of an anti-nuptial contract, and so far as the respondent claims restitution of conjugal rights, the action was one which in England would be assigned to the Divorce Division, in which the general practice is that the husband furnishes security for the wife's costs. As between husband and wife in matters affecting their domestic relations, the provisions of this section are rather repugnant to the ideas of English lawyers, and it is therefore not easy to rid oneself of the accepted ideas in order to give effect to this section.

It is to be observed too that under Section 37 of the Divorce Enactment 1928, subject to the provisions of that Enactment, all proceedings thereunder are regulated by the Code of Civil Procedure, so that at least as between husbands and wives, to whom that Enactment applies, considerable difficulty may hereafter arise, and it is, perhaps, not out of place here that I should suggest that this is one of the sections of the Civil Procedure Code, the amendment or repeal of which might well be considered.

In my view the Registrar was correct in the exercise of his discretion to decline to make any order on this summons. The appeal will stand dismissed therefore with costs to be paid by the appellants to the respondent.

Appeal dismissed.

(Appellate Criminal Jurisdiction)

Gerahty, J.

January 25, 1933.

CHAN HOCK TING ..... **Appellant.**

vs.

PUBLIC PROSECUTOR ..... **Respondent.**

(Perak Magistrate's Criminal Appeal No. 90 of 1932)

Customs Enactment, 1923, Sections 111 (a) and 116 (ii)—Forfeiture of goods.

When a Magistrate finds under Section 111 (a) of the Customs Enactment, 1923, that there has been an importation of restricted goods contrary to the provisions of that section, but he is not satisfied that the accused was concerned in that importation, then such finding does not remove the taint from the goods themselves, but merely removes the personal liability of the accused. It is to meet such a case as this that section 116(ii) was enacted, conferring upon a Magistrate all such powers in regard to the forfeiture of goods as he might have exercised had some person been convicted of an offence in relation thereto.

J. Dunford-Wood for the appellant.

Raja Musa, Deputy Public Prosecutor, for the respondent.

Cur adv. vult.

Gerahty, J.:—The Appellant in this case was charged before the First Magistrate, Ipoh, under Section 111 (a) of the Customs Enactment, 1923, in being concerned in the importation of restricted goods.

He was acquitted and discharged by the Magistrate on the ground that the defence negatived any question of the accused's complicity in the importation of these goods and that the words "concerned in" must mean some active participation or at least acquiescence in the offence alleged.

The prosecuting officer then applied for forfeiture of the goods under Section 116 (ii) as amended by Enactment 7/32, whereupon the learned Magistrate ordered the forfeiture of the goods in question. It is against this order that the present appeal has been brought. In his grounds of judgment the Magistrate sets out the facts as follows:—

> "The facts in this case are sufficiently proved, and indeed are not disputed by the defence. Chop Fuk Shun, a Chinese retail firm of Ipoh ordered in Ipoh certain goods from Wo Yu & Company a wholesale firm in Penang, through the latter's agent, Kam Loi. The goods were partly dutiable and partly not liable to duty. The dutiable goods were mostly sent by rail; but 5 cases of non-dutiable goods were sent by road. Out of these 5 cases, one was found to contain dutiable goods, packed with the non-dutiable goods. Goods so packed are under Rule 71 under the Customs Enactment, restricted goods, and the accused, the acting manager of Chop Fook Shun, was charged under Section 111 (a) with the offence of being 'concerned in the importation of restricted goods."

It has been argued by Counsel for the Appellant that under Section 111 of the Customs Enactment 1923, goods in respect of which a charge has been made are not liable to seizure and thus not to forfeiture under Section 116 save only on and after conviction of the person charged. It is further contended that neither the appellant nor any other person has committed an offence in respect of the goods in question and therefore that the provisions of Section 116 as amended by Enactment 7/32 do not apply.

This section reads as follows:—

> 7. Section 116 of the principal Enactment is amended by adding thereto a new sub-section as follows:
> "(ii) An order for the forfeiture of goods may be made if it be proved to the satisfaction of the Magistrate that an offence against this Enactment has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence."

It appears to me to be quite clear on perusing the record and the grounds of judgment of the Magistrate, and from an examination of the provisions of Section 111 (a) that the Magistrate was satisfied, and rightly so, that there has been in this case an importation of restricted goods contrary to the provisions of that section, but that he was not satisfied that the present appellant was "concerned in" that importation. That finding does not in my opinion remove the taint from the goods themselves, but merely removes the personal liability of the appellant.

It seems to me it was to meet just such a case as this that the amendment to Section 116 was enacted. The amended section when read together with Section 111, in my view, confers upon the Magistrate all such powers in regard to the forfeiture of the goods as he might have exercised had some person been convicted of an offence in relation thereto.

In my opinion the order for forfeiture made by the Magistrate in this case is correct in fact and in law and accordingly I dismiss the appeal.

Appeal dismissed

(Original Criminal Jurisdiction)

McFall, J.

February 9, 1933.

PUBLIC PROSECUTOR vs. KHADIJAH BINTI MAT SIAK.

(Selangor Criminal Trial No. 71 of 1932).

Penal Code, Section 494—Selangor Muhammadan Marriage and Divorce Registration Enactment, 1930, Section 3—Persons competent to celebrate marriages.

In the State of Selangor marriages under the Mohammadan Marriage and Divorce Registration Enactment, 1930, must be celebrated by a person appointed for that purpose by His Highness the Sultan or celebrated by the wali of the woman to be wedded and no other person. It is illegal for a wali to appoint anybody, other than a person appointed by His Highness, to celebrate the marriage of the woman of whom he is the wali.

R. C. Cussen, Deputy Public Prosecutor, for the Public Prosecutor.

Accused in person.

McFall, J.:—In this case Khadijah binti Mat Siak, the accused, is charged that she on or about the 19th day of September, 1932, at Salak in the District of Ulu Langat in the State of Selangor, having a husband—to wit—Gudang bin Mat Chili living, married again one Abdul Manan bin Radang, which marriage is void by reason of its taking place during the life time of such husband—to wit—Gudang bin Mat Chili, and has thereby committed an offence punishable under Section 494 of the Penal Code.

The evidence given is that Gudang, the complainant, married the accused about three years ago. No certificate of this marriage has been produced in evidence. Gudang says that he married the accused,